

## **Exhibit B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In re: )  
PHARMACEUTICAL INDUSTRY ) CA No. 01-12257-PBS  
AVERAGE WHOLESALE PRICE ) MDL No. 1456  
LITIGATION ) Pages 1 - ^

MOTION HEARING  
BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
October 26, 2006

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CERTIFIED REALTIME REPORTER  
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1       that's --

2               THE COURT:   About 50 cents?

3               MR. GOBENA:   55 cents, 60 cents.

4               THE COURT:   I just want to understand.   Now, that  
5       11 percent is by state statute or by federal statute?

6               MR. GOBENA:   That's federal statute.

7               THE COURT:   So in the generic context --

8               MR. GOBENA:   Yes, that's the formula.   Then on the  
9       brand context, it's obviously a different formula.

10              THE COURT:   That's best price.

11              MR. GOBENA:   Right, exactly, exactly.

12              THE COURT:   All right.

13              MR. GOBENA:   Okay.   You know, I know we don't have  
14       a lot of time here, and I think our briefs pretty in detail  
15       lay out a lot of our positions, but I just want to emphasize  
16       a few points here.

17              THE COURT:   Well, what do you with -- I mean, I am  
18       a little troubled.   I'm likely to define AWP to mean the  
19       plain language of what the statute says AWP means, and we can  
20       have a debate about, you know, is it mean or median or that  
21       sort of thing?

22              MR. GOBENA:   Right.

23              THE COURT:   But what about the point that at some  
24       point the federal government did know and for a False Claims  
25       Act they did know it was false?

1 MR. GOBENA: Well, it's interesting. Let me take a  
2 step back. As far as government knowledge goes, it's our  
3 position and we lay out in our brief that it only goes in the  
4 False Claims Act context to scienter. It only goes to  
5 scienter. It doesn't go to falsity, as much as the  
6 defendants would like it to go there. And scienter is  
7 defendant-specific, so I think when you're dealing with --

8 THE COURT: It also goes to statute of limitations,  
9 right?

10 MR. GOBENA: It could in certain circumstances.

11 THE COURT: When you knew or should have known to  
12 bring the suit. I mean, this was brought so early. I mean,  
13 I don't know, should you have known -- what's a False Claims  
14 Act, six?

15 MR. GOBENA: Six or ten years. It depends.  
16 There's a tolling provision built in based on -- so, in any  
17 event, as far as what we knew, the question that needs to be  
18 asked ultimately is, what did we know about Abbott's conduct  
19 and these drugs?

20 THE COURT: Right.

21 MR. GOBENA: And that information was known --  
22 these reports that we see out here that the defendants love  
23 to trot out there, if you look at all of them, only one  
24 report that Abbott has attached actually mentions an Abbott  
25 drug in this case. So if you're talking about what the

1 government knowledge --

2 THE COURT: In 2000, right?

3 MR. GOBENA: No, I'm talking about -- well, there  
4 is one report that they mention that's a 1997 report.

5 THE COURT: 1997, it mentions these four drugs?

6 MR. GOBENA: One of them. Vancomycin is  
7 mentioned. It's talking about Medicare reimbursement.

8 THE COURT: So taking their best case which is  
9 vancomycin, why doesn't after 1997 their knowledge of the  
10 falsity --

11 MR. GOBENA: Well, this is the nature of the  
12 government's knowledge defense, and it's not really a  
13 defense. The way the government relates (?) Scienter with  
14 the False Claims Act, in order for them to be insulated from  
15 liability, which what they're seeking to do, they're seeking  
16 to use these government reports to do that, they have to show  
17 that there's a meeting of the minds between them and the  
18 government that allowed them to engage in this conduct. And  
19 the best case that they can make from these reports is, well,  
20 the government recognized that some manufacturers were  
21 misrepresenting the prices and didn't do anything. Well,  
22 that's not a meeting of the minds with the government to  
23 sanction them, sanction they are reporting the false prices.  
24 And so, again, this is why this is going to be a very fact  
25 specific issue, your Honor, and I agree with you that it's

1 difficult to deal with these on a motion to dismiss. You're  
2 going to have to get facts, important facts. First of all,  
3 what did Abbott disclose to the government, if anything?  
4 Secondly, was there any dialogue with the government, and,  
5 third, did the government sanction this particular conduct  
6 that Abbott was engaged in? And, again, we're talking about  
7 very specific drugs and very specific conduct. And the  
8 allegations of the complaint lay out that not only are we  
9 talking about large spreads, but Abbott was out there  
10 actively marketing them as an inducement to their customers  
11 to purchase their drugs.

12 THE COURT: That's your kickback case.

13 MR. GOBENA: That's the kickback theory, but also,  
14 as we laid out, there's three theories of False Claims Act  
15 liability in our complaint. One is the kickback theory, that  
16 they were creating -- the spread was illegal remuneration  
17 that was being used to induce customers to go buy the drugs  
18 that are reimbursed by the federal government. We also  
19 allege that they engaged -- that it also constitutes a  
20 fraudulent course of conduct that led to the claims being  
21 presented to the United States. And we realize that if you  
22 drew a diagram, there would a cross over between the two  
23 theories, but you have to look at all the conduct and the  
24 particular times that this particular company engaged in, and  
25 then view that against the backdrop of the False Claims Act.